STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: IES UTILITIES INC. and INTERSTATE POWER COMPANY	DOCKET NOS. WRU-99-38-150 WRU-99-39-151

ORDER GRANTING WAIVERS

(Issued December 29, 1999)

On September 22, 1999, IES Utilities Inc. (IES) and Interstate Power Company (Interstate) each filed requests for limited waiver of IOWA ADMIN. CODE 199-20.9(2)"b"(6) that would allow IES and Interstate to recover what they regard as the cost of providing “net billing” to alternate energy producers (AEPs) under IOWA ADMIN. CODE 199-15.11(5). The Iowa Association of School Boards (IASB) and the Eldora-New Providence Community Schools (Eldora) each filed a letter in support of the waiver requests on October 4, 1999. The Consumer Advocate Division of the Department of Justice filed an objection to the waiver requests on October 11, 1999.

Attached to each waiver request was a draft tariff to implement the requested waivers. While it was not clear if IES and Interstate filed the draft tariffs for informational purposes or as actual tariff filings, the Board docketed and suspended the proposed draft tariffs by order issued October 22, 1999.

In support of their waiver requests, IES and Interstate cite the recent Polk County District Court ruling against the Board's single-meter "net billing" rule. MidAmerican Energy Company v. Iowa Utilities Board, "Ruling on Petition for Judicial Review," Nos. AA-3173, AA-3195, AA-3196 (Polk County District Court, August 24, 1999). IES and Interstate argue the proposal is a compromise under which IES and Interstate would continue to provide "net billing" to AEP customers. IES and Interstate add that their proposal applies only to the current regulated utility environment and would not necessarily apply in the event federal or state restructuring legislation is enacted.

IOWA ADMIN. CODE 199-20.9(2)"b"(6) allows energy adjustment clause (EAC) recovery of AEP purchases "at rates required under 199-15.12(476)." IES and Interstate's requested waiver would extend EAC cost recovery to AEP "net billing" required under IOWA ADMIN. CODE 199-15.11(5). Under the utilities' proposal, the cost of "net billing" would be determined through the use of two separate meters, one for recording kWh provided by the AEP customer to the utility, and the second meter for recording kWh provided by the utility to the AEP customer. The cost of "net billing" would be the utility's retail rate revenues that are offset by netting kWh recorded on the first meter against, and up to, kWh recorded on the second meter, minus avoided payments for AEP kWh recorded on the first meter. IES's and Interstate's rationale for this treatment is that the electricity provided by an AEP customer is not equivalent to the generation-on-demand, transmission, and distribution services reflected in IES's and Interstate's retail rate. The proposal would allow IES and Interstate to recover the net cost (i.e., lost margin) between the two transactions. The proposal provides IES and Interstate an incentive to voluntarily offer "net billing."

The IASB and Eldora each filed supportive comments urging approval of the waiver requests. Eldora is planning to construct a wind generation facility and estimates a 12-year payback period with the availability of “net billing.” Eldora states that approval of the waiver requests is necessary to begin construction.

Consumer Advocate urged rejection of IES’s and Interstate’s proposal for the following reasons:

1. It would contradict the Board’s view that “net billing” involves one transaction rather than two. This “one transaction” view is the basis for the Board’s and Consumer Advocate’s legal position in their pending appeal to the Iowa Supreme Court of the district court decision against “net billing.” (Supreme Court No. 99-1529).

2. The purpose of the EAC is to recover fuel costs, not lost revenue.

3. The proposal wrongly assumes that the AEP customer’s generation has less value than the utility’s retail rate. The Board’s single-meter “net billing” rules assume an in-kind exchange of energy between the AEP and the utility. IES and Interstate will be able to resell the electricity they receive from AEPs at full retail rates.

4. It would violate the Board's longstanding position against piecemeal ratemaking by failing to offset lost revenue with other possible sources of increased revenue.

5. It would violate IES and Interstate's merger pledge not to increase retail electric rates for four years after merger completion (i.e., until April 21, 2002).

The current waiver requests are similar to a proposal filed in 1998 by IES and Interstate (Docket Nos. TF-98-186, TF-98-187, WRU-98-36-150, WRU-98-36-151) that was rejected by Board. In its order rejecting the proposal issued August 21, 1998, the Board stated:

> IES and Interstate describe net billing as though it involves two separate transactions, one a purchase transaction and one a sales transaction. It does not. Conceptually, net billing is merely a metering and billing practice that involves one meter and one net transaction. Strictly speaking, in a net billing arrangement IES and Interstate only pay for net negative kWhs recorded by the single net billing meter, and this purchase cost is already recovered by the utilities through their EACs.

The Board continues to believe that this is the appropriate way to describe net billing and that single-meter net billing arrangements, contrary to the District Court's ruling, are not preempted by federal law. The Board believes the positions advanced by the Board and Consumer Advocate to the Iowa Supreme Court are persuasive. The Board also notes the net billing issue is pending before the Federal Energy Regulatory Commission (FERC) pursuant to a declaratory ruling request filed by MidAmerican Energy Company.

While the Board believes the legal arguments advanced by the Board and Consumer Advocate in favor of net billing will ultimately prevail, the Board also recognizes the chill the District Court's order has had on any new net billing arrangements. The District Court's order prohibiting mandated "net billing" under the Board's rules remains in effect while the appeal is pending. An Iowa Supreme Court decision is unlikely in the immediate future. Because of this chill, the Board is amenable to a proposal that would allow net billing to go forward pending ultimate resolution.

The Board in its August 21, 1998, order also stated that the EAC "is a sliding scale adjustment designed to recover electric energy and fuel purchases, not to compensate utilities for lost revenues." Although it has generally been Board practice to allow only fuel and fuel-related costs to be recovered through the EAC, there have been exceptions. For example, EAC recovery of AEP contract costs under IOWA ADMIN. CODE 199-20.9(2)"b"(6) was itself an exception by allowing recovery of AEP capacity as well as energy costs. An exception to the EAC rules here again may be appropriate in an attempt to allow net billing arrangements to move forward.

With respect to Consumer Advocate's other points, the Board believes that because IES's and Interstate's proposal results in a limited extension of the EAC rules in extremely unusual circumstances, a waiver is appropriate. Granting the waivers during the pendency of the legal proceedings allows net billing to continue at minimal cost to consumers. The Board does not believe granting the waivers violates the rate freeze commitment, which extends until April 21, 2002, made by IES and Interstate in their merger docket. The Board's order in that docket said that "[t]he Board understands this freeze does not apply to costs which are automatically flowed through the energy adjustment clause or the energy efficiency cost recovery adjustment." (Docket No. SPU-96-6, September 16, 1997, Order, pp. 13-14).

The waiver being granted is limited in scope and limited in duration. The waiver can be revisited following ultimate resolution of the net billing issue or passage of restructuring legislation. The Board will grant the waivers based on the encouragement they provide to "net billing" during this interim period. Because net billing customers produce energy primarily for their own use, granting the waivers should have minimal rate impact on IES and Interstate customers.

While the Board will grant the waivers, the Board will not approve the draft tariff language in its current form. The Board believes the draft tariff language is too vague in describing the proposed cost recovery for AEP "net billing." The Board will require the following, or similar, tariff revisions. These tariff revisions better describe the proposals contained in the requests for waivers. The underlined language has been added to the drafts attached to the waiver requests; the strikeout language has been deleted.

IES (Tariff Sheet No. 113)

The estimated expenses in A, B and C on Sheet No. 112 and the actual expense in L above include ~~lost~~ netted margin revenues from qualifying alternate energy production facilities and small hydro facilities that use net billing. These facilities had to be placed into service after November 1, 1999. Net billing is defined as a metering arrangement in which recorded alternate energy kWh provided by the customer to the utility are netted against recorded kWh provided by the utility to the customer, on a monthly basis. Netted ~~M~~margin revenues are defined as IES rate revenues, without energy adjustment charges (Riders 2 and 5) or energy efficiency charges (Rider 17), offset through net billing, minus avoided payments for cogeneration and small power production (Sheet Nos. 99-100).

Interstate (Tariff Sheet No. 32.1)

The estimated expenses in A and B on Sheet No. 32 and the actual expense in L above include ~~lost~~ netted margin revenues from qualifying alternate energy production facilities and small hydro facilities that use net billing. These facilities had to be placed into service after November 1, 1999. Net billing is defined as a metering arrangement in which recorded alternate energy kWh provided by the customer to the utility are netted against recorded kWh provided by the utility to the customer, on a monthly basis. Netted ~~M~~margin revenues are defined as IPW rate revenues, without energy adjustment charges (Riders 1E and 1AEP) or energy efficiency charges (Rider EECR), offset through net billing, minus avoided payments for cogeneration and small power production (Sheet Nos. 25.2).

IT IS THEREFORE ORDERED:

1. The requests for limited waiver of IOWA ADMIN. CODE 199-20.9(2)"b"(6) filed by IES Utilities Inc. and Interstate Power Company on September 2, 1999, are granted to the extent discussed in this order, effective upon approval of tariffs to implement the waivers.

2. IES and Interstate shall file tariffs consistent with this order on or before 30 days from the date of this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 29th day of December, 1999.